

SBA Lender Training

Tuesday, December 15 – 11:00 a.m. Eastern

**For audio portion, dial 1-888-858-2144 and
enter the access code of 4536711#**

**Please MUTE your phones or
use *6 on your keypad.**

Thank you!



U.S. Small Business Administration

West Virginia District Office

Agenda

- **Capital Access Financial System (CAFS) Webpage Overview**
- **SOP 50 57 2 Update - 7(a) Loan Servicing and Liquidation**



U.S. Small Business Administration

Capital Access Financial System (CAFS) Webpage Overview

https://caweb.sba.gov/cls/dsp_login.cfm



U.S. Small Business Administration

SOP 50 57 2

Rewrite

7(a) Loan

Servicing and Liquidation



U.S. Small Business Administration

BACKGROUND

- On November 24, SBA's Office of Capital Access announced the issuance of SOP 50 57 2, which **became effective on December 1, 2015**.
- SOP 50 57 2 is a combined servicing and liquidation SOP covering all 7(a) loans. **It sets out SBA standard operating policies and procedures for the administration of 7(a) Loans that have been fully disbursed and are in "regular servicing" and "liquidation" status.**
- In the ***absence of clear policies*** and parameters related to ***Prudent loan servicing and liquidation***, there are now set timeframes to complete liquidation – either 24 months from date of guaranty purchase or 24 months from effective date of SOP.
- The new SOP ***provides clarification*** on topics that frequently create confusion between lenders and SBA.

BACKGROUND

Major changes include but are not limited to:

The SOP defines “Fully Disbursed Loans” as follows:

7(a) loans move into “Regular Servicing” status when fully disbursed:

- SBA term loans are considered fully disbursed when the loan has been closed and the final loan disbursement has been made.
- SBA revolving lines of credit are considered fully disbursed when the loan has been closed and the initial loan disbursement has been made. (Chapter 1 – Introduction – page 9)

MAJOR CHANGES

- Definition of “Early Default” – This definition was slightly adjusted so that it is easier to understand. (Chapter 2 – Definitions – page 14)

Early Default means any of the following events of default that occurred either:

(a) within 18 months of the initial disbursement of the loan, or; (b) within 18 months of the final disbursement of the loan if the final disbursement occurred more than six months after the initial disbursement, **unless** the Borrower cured the default and made the scheduled loan payments for **12 months following the 18 month period**:

- a) Failure to make a scheduled loan payment;
- b) Funding a scheduled loan payment from the sale of collateral rather than from business operations;
- c) Deferment of more than three consecutive scheduled full payments; or
- d) Any other event of default that required the loan to be classified in liquidation status, e.g., bankruptcy.

Definition of “Loan Program Requirements”

Definition of “Loan Program Requirements” – This definition was reworded to make it easier to understand while keeping with the language in the CFR. (Chapter 2 – Definitions – page 16)

- **Loan Program Requirements** are requirements imposed upon Lenders by statute, SBA regulations, any agreement the Lender has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. (13 C.F.R. § 120.10)

MAJOR CHANGES

- Definition of “Prudent Servicing” and “Prudent Liquidation” – The term Prudent is now included in the SOP Definitions Chapter.
- **Prudent Servicing** means Lenders must service 7(a) loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements.
Those Lenders that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a guarantee.

MAJOR CHANGES

Prudent Liquidation

- Means Lenders must liquidate and conduct debt collection litigation for 7(a) loans in their portfolio no less diligently than for their non-SBA portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan.
- Also means that a Lender submits a Wrap-Up Report acceptable to SBA on a SBA loan no later than either 24 months from SBA guaranty purchase date or 24 months after the effective date of this SOP for loans where SBA has previously honored the guaranty and lenders are actively liquidating, whichever is longer, unless a written extension is granted by SBA from the applicable timeframe based on extenuating circumstances.
- Extensions of Prudent Liquidation Deadline May be granted by SBA on a case by case basis if an extenuating circumstance, such as a judicial foreclosure or a bankruptcy proceeding, prevents compliance with that deadline by the Lender. Extensions must be granted in writing. (Chap. 23, pages 142-143)

MAJOR CHANGES

- Definition of “SBA Loan Center” – Added contact information and geographic coverage of all 7(a) loan centers into the SOP. (Chapter 2 – Definitions – pp. 18-19)
- Small loans \$350,000 and under – Clarifies that lender servicing and liquidation activities on loans approved on or after January 1, 2014 in amounts of \$350,000 and less are now reported to the Commercial Loan Servicing Centers. (Chapter 2 – Definitions – pages 18-19)

MAJOR CHANGES

- Unilateral Actions – Removed the list of unilateral actions and instead included a link to the servicing and liquidation matrix (<http://www.sba.gov/content/servicing-and-liquidation-actions-7a-lender-matrix>) . (Chapter 3 – Lender Responsibility and Authority – page 23)
- Processing increases or decreases on a loan – Clarifies when lenders must come to the appropriate servicing center for approval and when approval should be obtained through e-Tran. (Chapter 3 – Lender Responsibility and Authority – pages 23-24)
 - Increase or decrease in SBA's the loan amount:
 - For non-delegated loans lenders must submit requests to the appropriate SBA loan servicing center to have a loan amount increased or decreased;
 - For delegated loans lenders must obtain approval for increases or decreases in the loan amount directly in e-Tran;

MAJOR CHANGES

- Credit Bureau Reporting – Provides guidance on credit bureau reporting requirements. (Chapter 3 – Lender Responsibility and Authority – pages 28-29)
 - a) Lenders are required to report borrowers of SBA-guaranteed loans to the commercial credit reporting agencies. Reporting of guarantors is not required.
 - b) Lenders submit reports to the commercial credit bureau reporting agencies. Appendix 3 of the Guide to the Federal Credit Bureau Program (“GFCBP”) lists the designated credit reporting agencies for commercial accounts.

MAJOR CHANGES

- c) Lenders are required to report commercial account information to the appropriate credit reporting agencies whenever they extend credit via an SBA guaranteed loan. Lenders should continue to report information concerning the extension of credit, including servicing, liquidation, and charge-off activities throughout the life-cycle of the loan.

Note: The GFCBP requires reporting on a quarterly basis, but states "more frequent updates may be provided as necessary to maintain the integrity and accuracy of the information being reported." (GFCBP - page 3-1).

- d) Generally, Lenders are required to provide information necessary to establish the identity of the Borrower such as:
- Name, address and taxpayer Identification Number;
 - The amount, status, and history of the debt; and
 - The agency or program under which the debt arose

Note: Each credit reporting agency will have their own data element requirements on credit bureau reporting, in addition to or in place of the above items. Lenders should contact the individual credit reporting agency for the applicable requirements.

MAJOR CHANGES

- Reporting Requirements – Lenders will now be required to submit semi-annual loan status reports to SBA beginning 6 months after guaranty purchase, instead of quarterly reporting. (Chapter 3 – Lender Responsibility and Authority – pages 28-29)
 - For loans which SBA has purchased from the secondary market after the effective date of this SOP, lenders must provide the SBA Loan Center with a written status report within 15 business days after receiving notice that SBA purchased its guaranty from the secondary market,
 - for all loans SBA has purchased, either from the secondary market or directly from the Lender, Lenders must provide the SBA Loan Center with a written status report every 6 months, starting with 6 months from the date of guaranty purchase, or the effective date of this SOP, whichever is earlier (Chapter 23, paragraph E)

MAJOR CHANGES

Wrap-up Report

- must be prepared and submitted in electronic format to the appropriate SBA Loan Center for review and approval within 30 calendar days after Prudent Liquidation is complete or upon receipt of a request from SBA, whichever occurs first.
- In addition to the above requirement, Lenders must comply with SBA's Prudent Liquidation Deadline definition in Chapter 2 if the Wrap-Up Report has not been previously submitted.

Enforcement Action by OCRM

- The SBA Office of Credit Risk Management may take enforcement action pursuant to 13 C.F.R. § 120.1400 and 13 C.F.R. § 120.1500 **on the basis of a Lender's servicing and liquidating actions or inactions.** (See SOP 50 53 (A) for information on SBA's credit risk management policy and procedures.)

MAJOR CHANGES

- Receiving Additional Principal Payments – Provides clarification to lenders that accepting additional principal payments and applying them to the loan balance will not advance the next payment due date. (Chapter 4 – Loan Payment administration – page 32):

- **Additional Principal**

Any funds remaining from payments on loans in regular servicing status after the accrued interest has been paid, the principal balance has been brought current, and the SBA permitted loan fees have been deducted, must be applied to reduce the principal balance of the loan. **The application of additional principal payments to the loan balance will not advance the next payment due date.**

MAJOR CHANGES

- Resolution of Loans in Liquidation Status – Provides guidance on the three ways to resolve loans once they are classified in liquidation status – 1) Return to Regular Servicing, 2) Pay in Full, or 3) Charge-off. (Chapter 14 – Liquidation)

Returning loans to Regular Servicing – Removed the requirement for 3 months of payments prior to returning a loan to regular servicing. Loans can now be returned to regular servicing once a written agreement is in place. SBA loans should be removed from liquidation status and returned to regular servicing **when the borrower has agreed to the resumption of regular payments pursuant to** a workout agreement, bankruptcy plan, reaffirmation agreement, assumption, or other written agreement that provides for resumption of regular payments.

MAJOR CHANGES

- Resolution of Loans in Liquidation Status –

Pay in Full – Added guidance for reclassifying loans as Paid in Full, distinguishing the difference between guaranty purchased and unpurchased loans.

SBA loans should be removed from liquidation status and classified as “paid in full” when the debt owed on the SBA **guaranteed loan** has been satisfied. (Purchase of the **guarantee** from the **secondary market** should not be confused with **satisfaction of the debt through payment** by an Obligor or through liquidation recoveries.)

MAJOR CHANGES

- Resolution of Loans in Liquidation Status –

3. Charge-off – Added flexibility for SBA to charge off a loan when a lender wrap up report is unavailable.

SBA loans should be removed from liquidation status and classified as “charged-off” by SBA when:

- a. The Lender’s Wrap-up Report has been approved, and the remaining loan balance has been charged-off by SBA; or
- b. The Lender has failed to submit an acceptable Wrap-up Report within the timeframe specified by SBA and the SBA Loan Center has determined that the loan should be charged off.

MAJOR CHANGES

- Expenses – Clarifies that SBA's review of expense reimbursement occurs at the time of guaranty purchase and SBA charge off. (Chapter 22 – Expenses and Recoveries – page 136)

3. When Requests May be Submitted

To prevent backlogs and expedite the SBA review process, requests for reimbursement or for approval of Recoverable Expenses deducted from recoveries may only be submitted at the following times:

a. Submission of Loan Guaranty Purchase Request

Requests for SBA reimbursement of Recoverable Expenses or approval of expenses paid for from recoveries may be submitted with the Lender's Purchase Package.

b. Submission of Wrap-up Report

All remaining requests for SBA reimbursement of Recoverable Expenses or approval of expenses paid for from recoveries should be submitted with the Lender's Wrap-up Report on the loan.

MAJOR CHANGES

- Annual Service Fee Collection – Clarifies the collection of annual fees at the time of guaranty purchase and introduces a policy limiting the collection of annual Service fees to 120 days if liquidation is resolved and a wrap-up report is submitted to SBA with the guaranty purchase request. (Chapter 23 – Loan Guaranty Purchase Requests – page 139)
 1. For loans approved before December 8, 2004, SBA will collect an Annual Service Fee through the date of guaranty purchase in the amount in place at the time the loan was approved.
 2. For loans approved on or after December 8, 2004:
 - a. If the Lender submits a Wrap-up Report acceptable to SBA concurrently with its guaranty purchase request, SBA will collect an Annual Service Fee in the amount in place at the time the loan was approved for a maximum of 120 calendar days from the last interest paid to date and “0” percent thereafter.
 - b. If the Lender does not submit a Wrap-Up Report acceptable to SBA concurrently with its guaranty purchase request, SBA will collect an Annual Service Fee in the amount in place at the time the loan was approved through the date the Lender submits demand of the guaranty purchase and a complete guaranty purchase package acceptable to SBA.

MAJOR CHANGES

- Submitting a Purchase Package to SBA - Added clarification regarding which servicing centers process which types of loans and provided links to their websites for information on the package requirements. (Chapter 23 – Loan Guaranty Purchase Requests - pp. 140-141)
 - 7(a), CLP and PLP Loans approved before January 1, 2014 and those more than \$350,000 on or after January 1, 2014 submitted to NGPC in Herndon and must use the 10-Tab
 - Express, Small Loan Advantage, Community Advantage, ARC and Pilot Program loans must be submitted to the appropriate Loan Servicing Center.
 - Loans for \$350,000 or less approved on or after January 1, 2014 must be submitted to the appropriate Loan Servicing Center.

MAJOR CHANGES

- Deadline for Lender Resolution on an SBA Purchased Loan – Reinforces Lender responsibilities after guaranty purchase and emphasizes the resolution of purchased SBA loans within 24 months after guaranty purchase, unless an exemption is granted by SBA. Also introduces consequences for lender failure to comply with this policy. (Chap. 23–Loan Guaranty Purchase Requests–pp. 142-143)
 - Prudent Liquidation – Reinforces Lender responsibility to prudently service and liquidate SBA loans after SBA honors its guaranty.
 - Exemption Request – Provides requirements and guidance for how lenders may obtain exemptions from SBA, when appropriate.
 - Consequences for failure to Prudently Service and Liquidate SBA loans – Introduces a policy to clarify the consequences for lenders that fail to Prudently service and liquidate SBA loans. If a lender fails to complete the resolution of an SBA loan within 24 months of guaranty purchase, or within the timeframe specified in an exemption authorized by SBA, it will result in the Lender being required to purchase the loan back from SBA. Additionally, the Lender will be referred to the Office of Credit Risk Management for enforcement actions, which could include restricting lenders from future participation in the secondary market and suspension of delegated authority.

MAJOR CHANGES

- When SBA May Deny Liability – Added all ten reasons that SBA may deny liability on a loan as stated in the CFR. (Chapter 24 – Denial of Liability on 7(a) Guaranty – page 145)
 1. Failed to comply materially with a Loan Program Requirement;
 2. Failed to make, close, service or liquidate the loan in a prudent manner;
 3. Placed SBA at risk through improper action or inaction;
 4. Failed to disclose a material fact to SBA in a timely manner;
 5. Misrepresented a material fact to SBA regarding the loan
 6. Sent a written request to SBA to terminate the guarantee;
 7. Failed to pay the guarantee fee within the period required under SBA rules and regulations;
 8. Failed to request that SBA purchase a guarantee within 180 days after maturity of the loan.
However, if the lender is conducting liquidation or debt collection litigation in connection with a loan that has matured, SBA will be released from its guarantee only if the lender fails to request that SBA purchase the guarantee within 180 days after the completion of the liquidation or debt collection litigation;
 9. Failed to use required SBA forms or exact electronic copies; or
 10. The borrower has paid the loan in full.

MAJOR CHANGES

- IRS Notification of Cancelled Debt - 1099-C issuance - SBA will now issue a 1099-C on the entire cancelled portion of an SBA loan. (Chapter 26 – Charge-off and Wrap-up Procedures - page 160)

E. IRS Notification of Cancelled Debt

2. Responsibility for Issuing IRS Form 1099-C

The SBA Denver Finance Center is responsible for providing the Borrower and the IRS with IRS Form 1099-C for the aggregate amount of the indebtedness discharged. The aggregate amount reported by SBA will include both the SBA's and the lender's share of the SBA loan. As the lead lender following charge-off, SBA will comply with the reporting requirements for both SBA and the lender by filing a single return.

Receiverships

Receiverships – Introduced additional clarification on receiverships to provide guidance to lenders when using a receivership to liquidate a loan. (Chapter 17 – Real Property Collateral Liquidation – page 96-97)

6. Appointment of Receiver

a. When Receiverships are Appropriate

A receiver is a Person appointed by the court to preserve and protect the collateral in connection with, or in lieu of, foreclosure. The laws governing receiverships are available in both federal and state law. Generally, however, the court will authorize the receiver to take possession of the property, manage it, collect rents, take any reasonably necessary action to protect and preserve its value, and liquidate the property. The remedy of a receivership is often provided for in contracts in the Loan Documents. State law may also provide separate statutory grounds for appointment of a receiver

Note: If the Lender does not have a presence in the area and it appears that the Lender is hiring the receiver as a substitute for the Lender liquidating the collateral directly or the proposed receiver does not have staff experienced in liquidation of the type of assets involved in the business and/or is otherwise unqualified the SBA may decline approval of a receivership.

Resources

- For the updated version of SOP 50 57 2
 - https://www.sba.gov/sites/default/files/sops/SOP_50_57_2_0.pdf

Contact Information

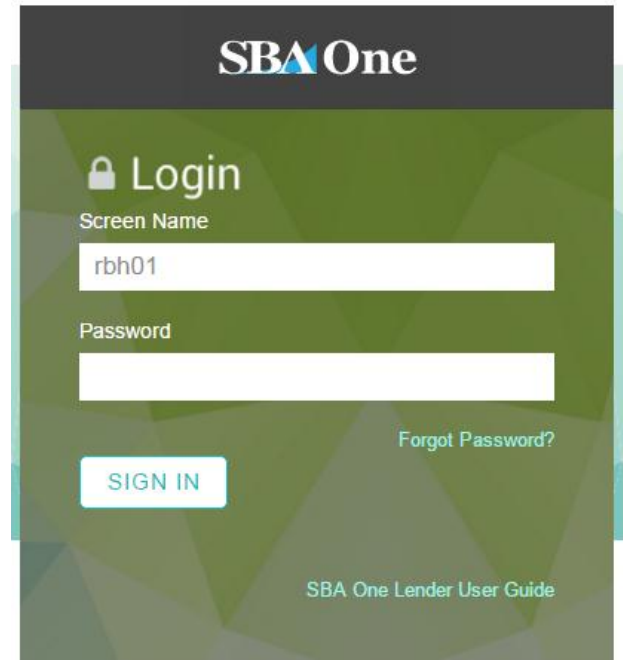
- Rick Haney at Richard.haney@sba.gov or (304) 623-7449
- Leo López at Leo.Lopez@sba.gov or (304) 347-5220

SBA One

Training Today: December 15 @ 2:00 p.m. Eastern

To participate/register:

Send an email to CAFS@sba.gov requesting to be registered for the webinar.

A screenshot of the SBA One login interface. The header features the 'SBA One' logo in white on a dark grey background. Below the header, the word 'Login' is displayed in white, preceded by a lock icon. The login form consists of two white input fields: the first is labeled 'Screen Name' and contains the text 'rbh01'; the second is labeled 'Password' and is currently empty. To the right of the password field is a link that says 'Forgot Password?'. At the bottom of the form is a white button with the text 'SIGN IN' in blue. The background of the login area is a dark green with a subtle geometric pattern. In the bottom right corner, there is a link for the 'SBA One Lender User Guide'.